

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRACEY L. KELLY, ET AL,) CASE NO. 14CV1086-AJB
) CASE NO. 14CV1098-AJB
 PLAINTIFFS,) CASE NO. 14CV1107-AJB
)
 -V-)
) SAN DIEGO, CALIFORNIA
 AMYLIN PHARMACEUTICALS,) AUGUST 7, 2014
 LLC, ET AL,) 2:04 P.M.
)
 DEFENDANTS.) MOTION HEARING

LOUIS JOHNSON, ET AL,)
)
 PLAINTIFFS,)
)
 -V-)
)
 MCKESSON CORP., ET AL,)
)
 DEFENDANTS.)

NICOLETTE KREIS, ET AL,)
)
 PLAINTIFFS,)
)
 -V-)
)
 MCKESSON CORP., ET AL,)
)
 DEFENDANTS.)
 _____)

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA
UNITED STATES DISTRICT JUDGE

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.
U.S. COURTHOUSE,
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REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

AUGUST 7, 2014

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19 APPEARING TELEPHONICALLY

20 FOR DEFENDANTS SIERRA ELIZABETH, ESQ.
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NICHOLAS KOVNER, ESQ.

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SAN DIEGO, CALIFORNIA; THURSDAY, AUGUST 7, 2014; 2:04 P.M.

DEPUTY CLERK: CALLING MATTER ONE ON CALENDAR, CASE NUMBER ONE FOR 14CV1086, KELLY VERSUS AMYLIN PHARMACEUTICALS, ON FOR MOTION HEARING; NUMBER TWO, CASE NUMBER 14CV1098, JOHNSON VERSUS MCKESSON CORPORATION; NUMBER THREE, CASE NUMBER 14CV1107, KREIS VERSUS MCKESSON CORPORATION.

THE COURT: OKAY. LET'S HAVE APPEARANCES FOR THE PLAINTIFFS IN THE CASE.

MR. SHKOLNIK: GOOD AFTERNOON, YOUR HONOR. HUNTER SHKOLNIK ON BEHALF OF PLAINTIFFS.

THE COURT: THANK YOU.

MR. THOMPSON: GOOD AFTERNOON, YOUR HONOR. RYAN THOMPSON ON BEHALF OF PLAINTIFFS.

THE COURT: THANK YOU.

AND FOR THE DEFENSE.

MS. HORN: ELAINE HORN AND EMILY PISTILLI FROM WILLIAMS AND CONNELLY, HERE FOR MERCK.

MS. TURNER: VICKY TURNER FROM WILSON TURNER KOSMO, ON BEHALF OF MERCK.

THE COURT: GREAT. THANK YOU.

AND ON THE PHONE WE HAVE MS. SIERRA, MR. KOVNER AND MR. SMITH; IS THAT RIGHT?

MR. SMITH: YES, YOUR HONOR.

THE COURT: OKAY. SO WE HAVE THREE CASES WITH MOTIONS TO REMAND TO PUT INTO PERSPECTIVE. AT LEAST AS I SEE

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1 IT, THE MOTIONS ARE DIRECTED TO REMAND THREE CASES PREVIOUSLY
2 REMOVED FROM THE CALIFORNIA SUPERIOR COURT TO THIS COURT. I
3 MUST NOW SEEK TO REMAND ON, ESSENTIALLY, A LACK OF COMPLETE
4 DIVERSITY ISSUES. THE THREE CASES, ALL OF WHICH NAME A VARIETY
5 OF THE SAME DEFENDANTS ON PRODUCTS LIABILITY TORT CLAIMS WITH
6 REGARD TO THE INCRETIN MIMETICS DRUGS, ARE ALL ESSENTIALLY THE
7 SAME, WITH A VARIETY OF PLAINTIFFS IN EACH OF THE THREE.

8 IT LOOKS LIKE PLAINTIFFS ASSIDUOUSLY WORKED IT OUT TO
9 HAVE A NEW JERSEY PLAINTIFF IN EACH CASE AND A CALIFORNIA
10 PLAINTIFF IN EACH CASE, TO POSTURE THE ISSUE ON REMAND, HAVING
11 ALSO NAMED THE DISTRIBUTOR MCKESSON, THE CALIFORNIA CITIZEN,
12 AND RECOGNIZING THAT MERCK AND NOVO NORDISK ARE NEW JERSEY
13 CITIZENS.

14 AND THE ISSUES, IN A NUTSHELL, ARE TO EITHER REMAND
15 IN TOTAL OR DROP MCKESSON, SEVER THE NEW JERSEY PLAINTIFFS, AND
16 KEEP THE CASE EXCEPT FOR THOSE PARTIES. AND AGAIN, I AM
17 READING SOMEWHAT SUMMARILY IN THE REVIEW.

18 SO RECOGNIZING THE LEGAL ISSUES, ALL OF WHICH LEAVE
19 THE COURT WIDE DISCRETION, A COUPLE QUESTIONS AND THEN YOU
20 FOLKS CAN MAKE OTHER COMMENTS.

21 AND THE FIRST QUESTION IS IF REMANDED, ARE THESE
22 CASES GOING TO END UP, THROUGH THE JCCP, WITH JUDGE HIGHBERGER,
23 OR ARE THEY GOING TO END UP WITH SOME OTHER JUDGE FOR
24 MANAGEMENT PURPOSES, OR DO WE KNOW?

25 **MR. SHKOLNIK:** YOUR HONOR, HUNTER SHKOLNIK ON BEHALF

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1 OF PLAINTIFFS. I CAN ANSWER THAT QUESTION DIRECTLY. THEY WILL
2 BE TRANSFERRED TO JUDGE HIGHBERGER AND BE ASSIGNED TO HIM FOR
3 ALL PURPOSES AND BE COORDINATED WITH THIS COURT AS WE HAVE BEEN
4 DOING WITH ALL OF THE OTHER CASES THAT ARE IN THE JCCP.

5 **THE COURT:** OKAY. THANKS FOR CLARIFYING THAT.

6 AND I GUESS THE QUESTION THAT ISN'T NECESSARILY
7 DISPOSITIVE -- BUT ONE THE COURT IS CERTAINLY CURIOUS ABOUT --
8 IS WHAT BENEFIT DO THE PLAINTIFFS OR ANYONE GET, PRACTICALLY
9 SPEAKING, FROM THIS ALIGNMENT OF THE CASES IN THE STATE COURT,
10 IF ULTIMATELY THEY ARE GOING TO BE COORDINATED IN PART
11 FOLLOWING THE SAME PART OF THE PROCESS OF THE MDL? AND THAT
12 WOULD EXCLUDE, OF COURSE, THE NEW JERSEY PLAINTIFFS BECAUSE
13 THAT IS A WHOLE DIFFERENT THING.

14 **MR. SHKOLNIK:** YOUR HONOR, LEAVING OUT THE NEW JERSEY
15 PLAINTIFFS, WHICH CERTAINLY CANNOT BE IN THIS COURT, THE REAL
16 REASON BEHIND FILING SOME CASES IN FEDERAL COURT AND SOME IN
17 STATE COURT IS JUST THE SHEER VOLUME OF THE CASES AND THE
18 ABILITY TO GET TRIALS FOR EACH OF THE PLAINTIFFS WITHIN
19 THEIR -- AND MANY OF THESE PEOPLE HAVE PASSED AWAY -- THE LIFE
20 SPANS OF THEIR EXECUTORS OR THEIR ADMINISTRATORS.

21 THIS COURT IS GOING TO HAVE -- AND I'M NOT SURE HOW
22 MANY YOU HAVE ALREADY -- IN EXCESS, PROBABLY, OF A THOUSAND
23 CASES. IF THEY ARE NOT HERE YET, THEY ARE CERTAINLY ON THEIR
24 WAY.

25 JUDGE HIGHBERGER HAS A SMALLER DOCKET AS IT STANDS

1 NOW, A MUCH SMALLER DOCKET. AT SOME POINT, BASED UPON THE
2 DIRECT FILING AGREEMENT OR ORDERS THAT WERE ENTERED, THESE
3 CASES WILL BE SUBJECT TO MOTIONS FOR FORUM NON-CONVENIENCE.
4 AFTER THEY ARE MATURED IN YOUR COURT, THEY WILL BE SENT ALL
5 OVER THE COUNTRY. MANY OF THESE PLAINTIFFS CAN BE TRIED IN THE
6 CALIFORNIA STATE COURT BEFORE JUDGE HIGHBERGER. YOU CERTAINLY
7 WILL HAVE MORE THAN YOUR FAIR SHARE TO HAVE TO TRY HERE, BUT
8 CERTAINLY WILL HAVE TO REMAND MANY CASES OUT OR FORUM NON THEM
9 OUT TO DIFFERENT COURTS WHEN ALL DISCOVERY IS DONE.

10 AND JUST FOR THE SIMPLE SAKE OF ALLOCATING OUR
11 DOCKETS, THE PLAINTIFFS FEEL THAT SOME OF OUR PLAINTIFFS WILL
12 GET QUICKER TRIALS BEFORE JUDGE HIGHBERGER THE MORE AND MORE
13 THAT ARE FILED HERE IN THE FEDERAL COURT. IT DOESN'T MEAN WE
14 HAVE DISRESPECT FOR THIS COURT OR THE FEDERAL SYSTEM; IT'S
15 SIMPLY THAT SOME OF OUR CASES WILL BE IN STATE COURT, SOME WILL
16 BE IN FEDERAL COURT. AND WE WOULD JUST LIKE TO TRY SOME IN
17 DIFFERENT PLACES.

18 AND WE KNOW THE ORDERS ARE NOT DIFFERENT. JUDGE
19 HIGHBERGER AND YOURSELF HAVE WORKED AS CLOSE AS I HAVE EVER
20 SEEN ANY COORDINATED LITIGATION. NO ONE IS TRYING TO GAME THE
21 SYSTEM OR GET DIFFERENT ORDERS. WE HAVE PROCEEDED WITH
22 EVERYTHING BEFORE YOURSELF IN TERMS OF MAJOR DISCOVERY ISSUES.
23 AND JUDGE HIGHBERGER HAS BEEN WORKING CLOSELY WITH YOU. SO
24 THIS IS VERY SIMPLY A DOCKET MANAGEMENT FOR OUR PLAINTIFFS.
25 SOME PLAINTIFFS WOULD PREFER TO BE IN STATE COURT, TO GET THEIR

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1 TRIALS IN THE JCCP. OTHERS WILL BE IN FEDERAL COURT AND WITH
2 DIFFERENT FEDERAL JUDGES AROUND THE COUNTRY.

3 IF ALL OF THEM COULD BE TRIED BEFORE YOU, WITH YOUR
4 KNOWLEDGE OF THIS CASE, THAT WOULD BE A WONDERFUL THING. BUT
5 WE KNOW WITH THE MDL PROCESS THAT IS NOT REALLY THE CASE.

6 **THE COURT:** I APPRECIATE THAT. MY CONCERN, FRANKLY,
7 IS NOT YOUR VIEW OF THIS COURT BUT THE FACT THAT THE SAN DIEGO
8 SUPERIOR COURT IS IMPACTED BY BUDGET CUTS, AND IT TAKES NINE
9 MONTHS IN SOME COURTS TO GET A MOTION HEARING. I DON'T SEE
10 THAT AS EXPEDIENT, BUT IF JUDGE HIGHBERGER WOULD BE THE
11 RECIPIENT, THAT SOLVES, I GUESS, THE FAIRNESS OR EXPEDIENCY
12 CONCERNS.

13 LET ME TURN TO THE DEFENDANTS IN CASE THEY WANT TO
14 RESPOND TO THAT, ALTHOUGH I WANT TO ASK ANOTHER QUESTION FIRST.

15 IF WE GO THROUGH AND EXCISE MCKESSON OR FIND THEM NOT
16 INDISPENSABLE, SEVER OFF THE NEW JERSEYANS, WE ARE LEFT, STILL,
17 WITH THREE CASES, SOME OF WHICH ARE PANCREATIC CANCER, SOME OF
18 WHICH ARE THYROID CANCER, AND SOME OF WHICH INVOLVE A NEW
19 PRODUCT -- NEW TO THE MDL PROCESS -- THIS TRADJENTA, WHICH IS
20 MANUFACTURED BY BOEHRINGER INGELHEIM.

21 SO WOULD IT NOT BE, THEN, THE COURT'S TASK TO START
22 RESHAPING THE PLEADINGS, AND ALMOST LIKE PROFESSOR DUMBLEDORE,
23 PUT ON A SORTING HAT AND START REDIRECTING, SO THAT SOME OF
24 THESE PLAINTIFFS BE REDIRECTED INTO THE MDL PROPER, SOME INTO
25 THE THYROID GROUP, AND PERHAPS ANOTHER GROUP NOW WITH ANOTHER

1 DEFENDANT, OR PERHAPS OTHER MALADIES?

2 AND SO I WOULD LIKE THE DEFENSE TO ADDRESS THAT. AND
3 YOU'RE WELCOME TO ADDRESS THE COMMENTS OF THE PLAINTIFFS, AS
4 WELL.

5 **MS. HORN:** WELL, YOUR HONOR, TO START WITH ADDRESSING
6 YOUR SPECIFIC QUESTION, BASED ON OUR REVIEW OF THE THREE
7 COMPLAINTS THAT ARE ISSUED HERE -- KELLY, KREIS AND JOHNSON --
8 THE OVERWHELMING MAJORITY OF THOSE, ONCE YOU SEVER OUT THE NEW
9 JERSEY PLAINTIFFS AND EITHER SEVER OUT MCKESSON OR DISREGARD
10 MCKESSON, THE MAJORITY OF THOSE ARE CLAIMS AGAINST MERCK AND
11 INVOLVE PANCREATIC CANCER. THERE IS ALMOST A HUNDRED DIFFERENT
12 PRODUCT USERS. AND OUT OF THOSE, 67 ARE MERCK CLAIMS.

13 AND JUST TO TAKE A FURTHER STEP BACK, WE ARE HERE
14 SPECIFICALLY ON KELLY, KREIS, JOHNSON AND JOHNSON. THERE WAS
15 SUBSEQUENTLY ANOTHER MULTI-PLAINTIFF CASE FILED IN
16 CALIFORNIA -- BRIGGS -- WHICH HAD MOVED TO THIS COURT IN JULY.

17 AND LAST WEEK WE WERE SERVED WITH A FIFTH
18 MULTI-PLAINTIFF CASE THAT WAS FILED IN CALIFORNIA, AND NO
19 ACTION HAS BEEN TAKEN ON THAT. IT WAS JUST VERY RECENT.

20 AND ALSO LAST NIGHT WE RECEIVED WORD THAT ANOTHER
21 SIMILAR CASE HAS BEEN FILED. APPARENTLY IT WAS SERVED ON
22 MCKESSON BUT HAS NOT YET REACHED MERCK.

23 **THE COURT:** AND ARE THEY ALL IN THE SAN DIEGO
24 SUPERIOR COURT, OR ARE THEY IN OTHER COURTS AROUND THE STATE,
25 THESE NEW THREE?

1 **MS. HORN:** NO. THESE CASES ARE IN SAN DIEGO.

2 **THE COURT:** OKAY. THANKS FOR THE HEADS-UP.

3 **MS. HORN:** AND OF THOSE FIVE CASES, BASED ON OUR
4 TALLY, THERE ARE 137 DIFFERENT PRODUCT USERS. AND OF THOSE
5 137, 126 OF THOSE CLAIMS WERE ACTUALLY CLAIMS ASSERTED ON
6 BEHALF OF DIVERSE PLAINTIFFS. THERE ARE ONLY 11 NON-DIVERSE
7 PLAINTIFFS.

8 AND OF THOSE 126 DIVERSE CLAIMS, 109 OF THEM, AGAIN,
9 ARE MERCK CLAIMS. AND, YOU KNOW, WITH ALL DUE RESPECT TO
10 COUNSEL, WITH RESPECT TO THE JCCP, THAT ORIGINATED AS A BYETTA
11 PROCEEDING. NOW, THERE HAVE BEEN A HANDFUL OF MERCK CASES
12 INVOLVED, AND MOSTLY EITHER JOINT USE OR THE LIKE, BUT THIS
13 MAGNITUDE OF MERCK CLAIMS HAS NOT BEEN CONTEMPLATED FOR.

14 AND I UNDERSTAND MR. SHKOLNIK'S REFERENCE TO WANTING
15 TO HAVE THE OPPORTUNITY TO DO MULTIPLE TRIALS, BUT IN MANY WAYS
16 THAT IS THE ANTITHESIS OF THE MDL STATUTE. THE IDEA IS THAT
17 YOU DON'T WANT MULTIPLE COURTS TO HAVE MULTIPLE PROCEEDINGS AT
18 THE SAME TIME. YOU WANT THEM -- TO THE EXTENT PRACTICABLE --
19 TO BE COORDINATED IN ONE COURT. IN THIS CASE, THE MDL COURT.
20 THIS WAS A FORUM THAT WAS CREATED SPECIALLY TO HEAR PANCREATIC
21 CANCER CASES INVOLVING THE INCRETIN CLASS OF THE DRUGS, AND IT
22 WAS CREATED AT THE REQUEST OF PLAINTIFFS.

23 ALSO, WITH RESPECT TO MR. SHKOLNIK, MY UNDERSTANDING
24 IS THAT THE PLAINTIFFS WHO ARE THE PSC LEADERSHIP HERE, THEY
25 ARE NOT THE LEADERSHIP GROUP IN THE JCCP. SO ALTHOUGH RIGHT

1 NOW EVERYTHING IS, YOU KNOW, BEING COORDINATED, MORE OR LESS,
2 IT'S NOT REQUIRED. AND THERE IS NO GUARANTEE THAT THAT IS
3 GOING TO CONTINUE IN THE FUTURE. AND THE GOALS OR THE
4 STRATEGIES THAT ARE IN PLACE, THAT THE COUNSEL THAT ARE IN
5 CHARGE OF JCCP PLAINTIFFS HAVE MADE -- YOU KNOW, DOWN THE LINE,
6 VARIED OR VARY FROM THIS PARTICULAR GROUP. SO THAT IS JUST
7 WORTH NOTING.

8 **THE COURT:** OKAY. GREAT. AND MR. SHKOLNIK, IF YOU
9 WANT TO RESPOND TO THAT, GO AHEAD, AND THEN I HAVE ANOTHER
10 QUESTION FOR YOU.

11 **MR. SHKOLNIK:** YES, YOUR HONOR. I WOULD LIKE TO
12 RESPOND. I THINK TO SUGGEST THAT THERE IS NOT NOW AND WILL NOT
13 CONTINUE TO BE COORDINATION BETWEEN JUDGE HIGHBERGER AND
14 YOURSELF IS -- I MEAN, TO PUT IT MILDLY, RANK SPECULATION.

15 FROM EVERYTHING JUDGE HIGHBERGER HAS SAID -- RIGHT TO
16 JUST THE OTHER DAY WHEN HE NOTICED THAT YOU ARE HAVING A STATUS
17 CONFERENCE, AND HE NOTICED A JOINT ONE AGAIN. HE IS DOING THE
18 SAME GENERAL CAUSATION PLAN THAT YOU ADOPTED HERE. HE DID THE
19 SCIENCE DAY THAT YOU HAVE ADOPTED HERE. THIS IS A COORDINATED
20 CASE. WHETHER THE PLAINTIFFS LIKE IT OR DISLIKE IT OR THE
21 DEFENDANTS LIKE IT OR DISLIKE IT, THIS IS UP TO THE JUDGES.
22 AND I THINK THE TWO OF YOU HAVE MADE THAT VERY CLEAR.

23 WITH RESPECT TO WHETHER MERCK HAS A PRESENCE THERE OR
24 NOT, MERCK DOES HAVE A PRESENCE IN THE JCCP. THEY HAVE BEEN
25 APPEARING THERE. THEY ARE LITIGATING THERE. THESE CASES ARE

1 GOING -- MANY CASES ARE GOING TO REMAIN THERE. WHETHER IT'S
2 TEN PLAINTIFFS OR 100 PLAINTIFFS IN THESE COMPLAINTS, I DON'T
3 THINK THAT IS REALLY THE ISSUE.

4 WHAT WE'RE DEALING WITH HERE IS WHETHER OR NOT
5 MCKESSON IS A PROPER PARTY. COURTS HAVE REPEATEDLY SAID THAT
6 THEY ARE A PROPER PARTY. IN FACT, SOME OF THE CASES WE
7 CITED -- THE *MARBLE* CASE UP IN SAN FRANCISCO -- ARE MERCK CASES
8 WHERE MERCK DISTRIBUTED THROUGH MCKESSON.

9 AND MOST RECENTLY, THE OPINION WE CITED IN OUR
10 SUPPLEMENTAL AUTHORITY FROM THE COURT OF APPEALS IN THE FIRST
11 APPELLATE DISTRICT, WHICH WAS A BRISTOL MYERS CASE, WHERE THERE
12 WAS A MUCH LARGER -- I THINK THERE WERE 300 CASES, 400 CASES
13 INVOLVED WHERE THE DEFENDANTS SOUGHT A CHALLENGE ON PERSONAL
14 JURISDICTION.

15 BUT WHAT IS TELLING IN THAT OPINION IS THAT THE COURT
16 IN THE LATTER PARTS -- AND I ARGUED THE CASE AND, LUCKILY, WAS
17 SUCCESSFUL ON IT. THE COURT OUTLINED THE IMPORTANCE OF THE
18 COURTS IN CALIFORNIA BEING A PROPER VENUE WHERE MCKESSON IS THE
19 DISTRIBUTOR OF A DRUG JUST -- IT'S A DIFFERENT DRUG. THIS WAS
20 PLAVIX IN THAT CASE. BUT THE SAME DISTRIBUTION PROCESS, BASED
21 OUT OF SAN FRANCISCO.

22 AND WHAT'S GOING TO END UP HAPPENING IS IF YOU SPLIT
23 THESE CASES UP -- AND I THINK TO ANSWER THE QUESTION YOU POSED
24 A WHILE AGO, WE ARE GOING TO BE PROCEEDING WITH THESE MCKESSON
25 CASES SEPARATELY IN A NON-JCCP FORMAT. UNFORTUNATELY, THEY

1 WILL END UP IN SAN DIEGO STATE COURTS BECAUSE IT'S NOT PART OF
2 THE JCCP AS AN INDIVIDUAL STAND-ALONE CASE.

3 WITH RESPECT TO ALL THE MERCK AND JERSEY PLAINTIFFS,
4 IF THEY'RE SEVERED OFF, WE ARE GOING TO BE IN THE STATE COURT.
5 AND IF THERE IS A SEVERING, THEY ARE GOING TO END UP IN THE
6 STATE COURTS OF NEW JERSEY. THAT IS WHERE WE ARE GOING TO BE
7 FILING THESE CASES, UNFORTUNATELY. AND IT'S GOING TO BE A
8 THIRD CONSOLIDATED LITIGATION OF THESE TYPE OF CASES.

9 AND WHAT'S VERY INTERESTING IS MERCK, UNTIL THESE
10 MOTIONS, HAS BEEN ASKING US TO DISCONTINUE THE NEW JERSEY CASES
11 AND FILE THEM IN CALIFORNIA STATE COURT, WHICH IS VERY
12 INTERESTING. NOW THEY DON'T LIKE THE CALIFORNIA STATE COURTS.
13 I'M NOT GOING TO GO INTO THEIR THOUGHT-PROCESS, BUT THEY HAD US
14 DISCONTINUE CASES AND REFILE THEM IN CALIFORNIA STATE COURT.

15 I JUST THINK NO ONE BELIEVES IN THE MDL PROCESS ANY
16 MORE THAN I DO -- MORE THAN I DO. IT'S A VERY GOOD PROCESS.
17 BUT IT'S NOT THE ONLY PROCESS FOR CONSOLIDATION. WE DON'T WANT
18 CASES ALL OVER THE COUNTRY, BUT WE HAVE TWO VERY, VERY STRONG
19 CONSOLIDATIONS -- THE JCCP AND THE MDL -- THAT ARE WORKING
20 WELL. AND THERE IS NO REASON TO BLOW A CASE APART AND SORT OF
21 GERRYMANDER PLAINTIFFS AROUND THE COUNTRY.

22 **THE COURT:** AND I APPRECIATE THAT. AND I KNOW THAT
23 IN A STRAIGHT-LINE ANALYSIS WE'D LOOK UP OR DOWN AT MCKESSON'S
24 LACK OF JUST BEING NOT INDISPENSABLE. WE'D LOOK AT THE NEW
25 JERSEYS AND SO FORTH. AND I'M DEALING MORE IN THE PRACTICAL

1 IMPACT UPON ALL OF YOU AND JUDGE HIGHBERGER AND MYSELF, AND
2 WITH CONCERN FOR THE DEFENDANTS AND ALL OF THE VARIOUS
3 PLAINTIFFS, OF WHICH I THINK WE WERE CLOSE TO 600 THE LAST TIME
4 WE RAN THE SHEET. BUT AS YOU SAY, IT TENDS TO BE GROWING.

5 BUT STRICTLY ON THE MCKESSON STANDPOINT, I MEAN, FROM
6 A REALISTIC STANDPOINT, DO YOU REALLY FEEL THAT THEY ARE NOT
7 INDISPENSABLE FROM A COMPENSATORY STANDPOINT?

8 I MEAN, LET'S FACE IT, THEY ARE THE DISTRIBUTORS.
9 THEY PASS THIS STUFF THROUGH. TEN OF THE 16 STATES OF THE
10 PLAINTIFFS IN THESE THREE CASES DON'T HAVE DISTRIBUTOR
11 LIABILITY. AND YOU HAVE GOT FIVE, IF NOT SIX, HUGE
12 PHARMACEUTICAL COMPANIES THAT COULD PROBABLY WELL WITHSTAND
13 BILLIONS IN DAMAGES IF THE FACTS WARRANT IT. I MEAN, WHY IS
14 MCKESSON SO CRITICAL IN A PRACTICAL SENSE? I MEAN, LEGALLY, I
15 UNDERSTAND THE CALIFORNIA LAW. FROM A PRACTICAL STANDPOINT,
16 WHY DO WE REALLY NEED THEM?

17 **MR. SHKOLNIK:** FOR DOLLARS AND CENTS I WOULD SUBMIT,
18 YOUR HONOR. YOU ARE CORRECT. I THINK MERCK AND THE REST OF
19 THE PHARMACEUTICAL COMPANIES HERE HAVE AMPLE ASSETS TO SATISFY
20 ANY JUDGMENTS OR RESOLUTION OF THIS CASE.

21 ONE OF THE PROBLEMS THAT OVERLOOKS IS SIMPLY LOOKING
22 AS TO ONE DEFENDANT MAYBE HAVING ENOUGH MONEY TO PAY VERSUS
23 ANOTHER IS MCKESSON NOT ONLY DISTRIBUTES IT, BUT THEY DO THE
24 PACKAGES. LIKE, WHEN YOU PURCHASE YOUR DRUG AT THE PHARMACY,
25 OR ANYONE DOES, AND IT'S A MCKESSON-DISTRIBUTED DRUG, THERE IS

1 A LABEL PUT ON THERE. THIS IS SORT OF THE ABRIDGED VERSION
2 THAT THE ACTUAL PLAINTIFF GETS, AND THEY ARE OFTEN QUESTIONED
3 UPON BY THE DEFENDANTS AT THEIR DEPOSITIONS.

4 AND THOSE PACKAGE INSERTS ARE OFTEN, ALMOST
5 EXCLUSIVELY -- WELL, THEY ARE DEFINITELY NOT MADE BY THE
6 PHARMACEUTICAL COMPANY. THEY ARE MADE BY THE DISTRIBUTOR AND
7 GIVEN TO THE PHARMACY. SOMETIMES THE PHARMACY CHAIN THEMSELVES
8 MAKE ANOTHER ONE, BUT MCKESSON HAS ONE OF THEIR DIVISIONS,
9 WHICH IS ONE OF THE REASONS WHY THEY ARE NAMED, WHERE THEY COME
10 UP WITH THE FAIR USE OF THE APPROVED LABEL TO SLAP ON THE
11 OUTSIDE OF THE ENVELOPE OR THE PACKET, WHICH IS WHAT MOST
12 PLAINTIFFS THEMSELVES READ.

13 SO THEY ARE INDISPENSABLE. AND A COMPANY CAN'T SIT
14 BACK -- AND THEY TRULY ARE THE BIGGEST IN THE WORLD; THEY ARE
15 VERY PROUD TO SAY IT; THEY ARE MAKING BILLIONS OF DOLLARS
16 DISTRIBUTING; THEY ARE MAKING THE LABELS -- BUT THEY CAN SIT
17 BACK AND SAY WELL, WE DON'T HAVE TO PUT ANY PRESSURE ON THE
18 MANUFACTURER TO CHANGE THEIR LABEL. WE ARE JUST GOING TO SIT
19 BACK AND PASS IT THROUGH.

20 SO WE DO THINK THERE IS A REAL REASON TO HAVE A
21 COMPANY LIKE MCKESSON IN THE COURTROOM. AND WE ARE SERVING
22 DISCOVERY. AND WE ARE GOING TO PROCEED -- WE HAVEN'T DONE IT
23 YET -- WITH DEPOSITIONS UP IN THE JCCP AGAINST THIS COMPANY.
24 SO IT'S GOING TO BE LITIGATED.

25 **THE COURT:** OKAY. I APPRECIATE THAT INSIGHT.

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1 AND ANY RESPONSE OR DISCUSSION ON THESE POINTS THAT
2 THE DEFENSE WOULD LIKE TO ADD?

3 **MS. HORN:** YES, JUST BRIEFLY. SPECIFICALLY ON
4 MCKESSON, GIVEN THE POSTURE OF THESE SPECIFIC CASES THAT HAVE
5 BEEN FILED IN STATE COURT AGAINST MCKESSON, THEY COULD HAVE
6 BEEN FILED IN FEDERAL COURT AGAINST MCKESSON. THERE WAS NOT A
7 HURDLE TO DOING THAT. THE ISSUE WITH HAVING MCKESSON IN THESE
8 CASES IS NOT JURISDICTIONAL. IT HAS TO DO WITH THEM BEING THE
9 FORUM -- THE FORUM DEFENDANT RULE, WHICH IS NOT JURISDICTIONAL;
10 IT'S PROCEDURAL.

11 SO ALL OF THESE CASES -- IF YOU PUSH THE NEW JERSEY
12 PLAINTIFFS TO THE SIDE -- ALL OF THESE CASES COULD HAVE BEEN
13 FILED IN THE FIRST INSTANCE IN THIS COURT OR ANY OTHER FEDERAL
14 COURT, AND IT WOULD HAVE BEEN A FEDERAL SUBJECT MATTER
15 JURISDICTION OVER THESE CASES.

16 SO THE FACT THAT THE PLAINTIFFS -- ALTHOUGH THEY
17 NEVER HAVE BEFORE, IF THEY SUDDENLY WANT TO START ACTUALLY
18 LITIGATING THEIR CLAIMS AGAINST MCKESSON, THEY CAN CERTAINLY DO
19 THAT IN FEDERAL COURT.

20 **THE COURT:** OKAY.

21 **MS. HORN:** ON THE ISSUE OF THE SUPPLEMENTAL AUTHORITY
22 THAT WAS --

23 **THE COURT:** THE BRISTOL MYERS CASE.

24 **MS. HORN:** YEAH, THE BRISTOL MYERS CASE. AGAIN, JUST
25 TO NOTE, THAT PARTICULAR CASE DEALT WITH WHETHER OR NOT THERE

1 WAS SPECIFIC JURISDICTION OVER THE DEFENDANT AND WHETHER OR NOT
2 IT WAS FAIR TO HAVE HIM BROUGHT INTO COURT. IT HAD NOTHING TO
3 DO WITH WHETHER OR NOT CALIFORNIA SUBSTANTIVE LAW WAS GOING TO
4 APPLY OR WHETHER OR NOT THERE WAS DISTRIBUTOR LIABILITY OR
5 ANYTHING IN THAT CASE.

6 **THE COURT:** OKAY.

7 **MS. HORN:** AND ONE FINAL POINT ON THAT, YOUR HONOR.
8 THERE WAS A REFERENCE MADE TO THE CASES THAT HAVE PREVIOUSLY
9 BEEN FILED IN NEW JERSEY. MY UNDERSTANDING IS THAT THERE WAS
10 AN AGREEMENT WHERE THOSE CASES -- WITH THE EXCEPTION OF ONE
11 WHICH INVOLVED A NEW JERSEY PLAINTIFF, THE NON-NEW JERSEY
12 PLAINTIFFS WERE ACTUALLY FILED IN FEDERAL COURT OR PLACED ON
13 TOLLING AGREEMENTS. THERE WAS ONE NEW JERSEY PLAINTIFF WHO --
14 YOU COULDN'T DO THAT IN FEDERAL COURT SO THEY GOT REFILED IN
15 THE JCCP.

16 **THE COURT:** SO THANK YOU FOR THAT. YOU HAVE
17 EXHAUSTED MY QUESTIONS.

18 SO FROM THE PLAINTIFFS' STANDPOINT, I WILL LET YOU
19 FOLKS MAKE ANY FURTHER COMMENTS YOU FEEL YOU WOULD LIKE TO
20 FLUSH OUT FOR THE RECORD, KEEPING IN MIND I HAVE READ ALL YOUR
21 STUFF AND UNDERSTAND YOUR POSITIONS. YOU HAVE HELPED CLARIFY
22 SOME OF THE PRACTICAL ELEMENTS OF THE COURT'S THOUGHT PROCESS
23 HERE.

24 BUT, MR. SHKOLNIK, I WILL LET YOU COMMENT FREELY ON
25 ANYTHING ELSE YOU WOULD LIKE.

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1 **MR. SHKOLNIK:** YOUR HONOR, I DON'T THINK THERE IS
2 ANYTHING WE WOULD LIKE TO ADD TO THIS, AND WE THANK YOU FOR
3 YOUR TIME. AND I THINK YOUR QUESTIONS HIT THE POINTS THAT WE
4 WOULD HAVE ADDRESSED. THANK YOU VERY MUCH.

5 **THE COURT:** HOW ABOUT ON THE DEFENSE SIDE? IF ANY OF
6 THE DEFENSE COUNSEL HAVE ANYTHING, IN GENERAL, THEY WOULD LIKE
7 TO SAY ABOUT THE ISSUES, YOU CERTAINLY MAY.

8 **MS. HORN:** YES, YOUR HONOR. THE KEY QUESTION THAT IS
9 PRESENTED HERE, WHICH WE ACTUALLY STATED PLAINLY IN OUR BRIEF,
10 IS WHETHER OR NOT THE COURT WANTS TO EXERCISE THE LEGAL
11 DISCRETION WHICH IT HAS TO SEVER OUT THE NON-DIVERSE CLAIMS AND
12 KEEP JURISDICTION OVER THE ONES THAT ARE SUBJECT TO FEDERAL
13 SUBJECT MATTER JURISDICTION.

14 WE BELIEVE THAT THAT WOULD BE APPROPRIATE TO DO HERE
15 BECAUSE THE PURPOSE OF THIS PARTICULAR FORUM WAS TO HEAR CLAIMS
16 AGAINST CERTAIN MANUFACTURES OF INCRETIN-BASED THERAPIES WHERE
17 THE PLAINTIFFS HAVE ALLEGED PANCREATIC CANCER. THAT WAS THE
18 REASON THIS WAS CREATED. IT WAS CREATED AT THE BEHEST OF
19 PLAINTIFFS. AND FOR A YEAR LATER TO SUDDENLY START FILING
20 100-PLUS CASES ELSEWHERE, THAT COULD HAVE BEEN FILED IN THIS
21 COURT, IT'S TROUBLING. IT'S TROUBLING.

22 THERE WAS A REFERENCE TO WANTING TO HAVE A VARIETY OF
23 DIFFERENT -- OR THE OPPORTUNITY TO PURSUE TRIALS IN DIFFERENT
24 FORUMS. BUT AS THE COURT IS AWARE, WHAT TYPICALLY HAPPENS IN
25 THE MDL PROCESS IS THAT THERE IS SOME KIND OF BELLWETHER

1 PROCESS. THAT YOU DON'T GO AROUND AND TRY A THOUSAND, 10,000
2 CASES. YOU TRY A FEW. AND THEN AFTER THAT HAPPENS, THE
3 PARTIES HAVE A PRETTY GOOD IDEA ABOUT WHAT THE CASES ARE OR ARE
4 NOT WORTH AND THEY PROCEED FROM THERE. THERE IS LOTS OF
5 EXAMPLES OF THAT. SO THE IDEA THAT YOU NEED TO HAVE THE
6 ABILITY TO TRY 100-PLUS CASE IGNORES REALITY ON THAT POINT,
7 YOUR HONOR.

8 **THE COURT:** OKAY.

9 **MR. SMITH:** YOUR HONOR, IT'S DOUG SMITH ON THE PHONE,
10 FROM BOEHRINGER.

11 **THE COURT:** YES, SIR.

12 **MR. SMITH:** AND I DON'T MEAN TO INTERRUPT.

13 **THE COURT:** GO AHEAD.

14 **MR. SMITH:** I JUST WANTED TO CLARIFY OUR SITUATION A
15 LITTLE BIT. WE ARE ONLY NAMED IN THE KELLY CASE. AND IN THAT
16 CASE THERE IS AN ALLEGATION THAT THE PLAINTIFF TOOK TRADJENTA
17 FOR, AT MOST, FOUR MONTHS. AND WE ARE NOT EVEN SURE THAT THE
18 PLAINTIFF REALLY TOOK TRADJENTA. BUT THE DRUG HAS ONLY BEEN ON
19 THE MARKET -- AND THIS IS THE ONLY CASE IN THE COUNTRY WHERE WE
20 HAVE BEEN NAMED AS A DEFENDANT.

21 SO FROM OUR PERSPECTIVE, WE WERE NAMED AS A DEFENDANT
22 IN A CASE IN SAN DIEGO STATE COURT, AND THEN IT WAS REMOVED TO
23 FEDERAL COURT. AND WE HAVE NO CASES IN THE JCCP INVOLVING US.
24 WE DON'T THINK IT WOULD BE APPROPRIATE FOR US. THERE IS
25 NOTHING TO CONSOLIDATE OVER THERE WITH RESPECT TO US. AND SO

1 FROM OUR PERSPECTIVE, WE ARE KIND OF A TANGENTIAL DEFENDANT
2 THAT WAS NAMED IN A CASE IN SAN DIEGO STATE COURT. THE
3 PLAINTIFFS CHOSE TO FILE IN SAN DIEGO STATE COURT. AND OUR
4 POSITION WOULD BE THAT THAT IS WHERE IT SHOULD BE IF IT'S NOT
5 GOING TO BE IN THE FEDERAL COURT.

6 SO I JUST WANTED TO CLARIFY THAT WE WEREN'T NAMED IN
7 ALL OF THE OTHER CASES, AND FOR THE COURT'S INFORMATION THAT
8 THERE AREN'T ANY OTHER TRADJENTA CASES OUT THERE.

9 AND BASICALLY, OUR POSITION, I THINK, IS THE SAME AS
10 MERCK'S WITH RESPECT TO THE JCCP, EXCEPT THAT IN OUR CASE THERE
11 AREN'T ANY OTHER CASES OUT THERE TO CONSOLIDATE OVER IN THE
12 JCCP.

13 **THE COURT:** OKAY. WELL, THANK YOU FOR THAT.

14 ANYONE ELSE ON THE PHONE HAVE ANY COMMENTS THEY WOULD
15 LIKE TO MAKE?

16 HEARING NO ONE, MS. HORN, DID YOU HAVE ANYTHING ELSE?

17 **MS. HORN:** THERE WAS ONE ISSUE I WANTED TO GET TO,
18 WHICH CONCERNS THE ALLEGATIONS AGAINST MCKESSON SPECIFICALLY.
19 WE HAVE TWO DIFFERENT SETS OF COMPLAINTS. WE HAVE THE ONE
20 KELLY COMPLAINT, WHICH WE JUST REFERENCED THAT IS THE THYROID
21 CASE AND THE TRADJENTA CLAIM THAT WAS BROUGHT BY THE NAPOLI
22 FIRM. THAT COMPLAINT DOES NOT MAKE ANY ALLEGATIONS THAT THE
23 PLAINTIFFS NAMED THERE INGESTED MEDICATIONS THAT WERE ACTUALLY
24 DISTRIBUTED BY MCKESSON.

25 YOU CAN CONTRAST THOSE ALLEGATIONS WITH THE

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1 ALLEGATIONS THAT ARE IN THE OTHER TWO COMPLAINTS, AND THERE IS
2 A STARK DIFFERENCE, WHERE THEY ACTUALLY MAKE THE EFFORT TO,
3 UPON INFORMATION AND BELIEF, MAKE THAT ALLEGATION.

4 WE HAVE MADE A REQUEST FOR JURISDICTIONAL DISCOVERY.
5 TO THE EXTENT THAT THIS ALL TURNS ON WHETHER OR NOT THERE ARE
6 VIABLE MCKESSON CLAIMS AND WHETHER THEY ARE GOING TO BE
7 PURSUED, IF A PLAINTIFF DID NOT ACTUALLY TAKE A DRUG THAT WAS,
8 YOU KNOW, DISTRIBUTED BY MCKESSON, THERE IS NO CLAIM.

9 AND WE SUBMITTED SWORN AFFIDAVITS THAT SHOW THAT THE
10 MAJORITY -- AT LEAST AS TO MERCK'S PRODUCT -- THE MAJORITY OF
11 JANUVIA AND JANUMET DISTRIBUTED IN THE UNITED STATES IS NOT
12 DISTRIBUTED THROUGH MCKESSON. AND AT THIS POINT THERE IS NO
13 OTHER SPECIFIC ALLEGATIONS IN THE COMPLAINT. AND GIVEN THAT
14 THESE ISSUES COULD BE DETERMINED FAIRLY QUICKLY IF WE KNEW THE
15 IDENTITY OF THE PHARMACY OR THE IDENTITY OF THE PRESCRIBER, IT
16 WOULD BE EASY ENOUGH TO FIGURE OUT WHETHER OR NOT MCKESSON
17 ACTUALLY DISTRIBUTED THOSE DRUGS. AND BECAUSE OF THAT, WE ARE
18 ASKING THAT, AT A MINIMUM, SOME LIMITED PERIOD BE ALLOWED FOR
19 JURISDICTIONAL DISCOVERY TO INVESTIGATION THOSE CLAIMS.

20 **THE COURT:** OKAY. AND LET ME FLIP AROUND THE
21 QUESTION I ASKED THE PLAINTIFFS EARLIER. WITH JUDGE HIGHBERGER
22 AND I HAVING THE FRONT END AND THE BACK END -- AND WE CAN
23 DEBATE WHO GETS WHAT END -- AND I KNOW THAT YOU SAID THERE IS
24 DIFFERENT COUNSEL AND SO FORTH. I MEAN, MERCK CAN OBVIOUSLY
25 CONTROL ITS LAWYERS WHETHER THEY ARE IN TWO DIFFERENT CASES OR

1 ONE CASE -- WHAT IS THE REAL DOWNSIDE HERE IF IT'S ALL GOING TO
2 BE GOING LOCKSTEP DOWN THE LINE?

3 I THINK YOU'RE RIGHT ABOUT THE BELLWETHER CASES. BUT
4 IN TERMS OF THE OVERALL APPROACH, I DON'T SEE THERE IS A STRONG
5 POTENTIAL FOR VARIANCE TO OCCUR WITH THE JUDGES WORKING CLOSELY
6 TOGETHER AND, YOU KNOW, MANAGING THE CASES ACTIVELY.

7 SO I GUESS THE QUESTION IS WHERE'S THE BEEF, REALLY?
8 IT'S NOT LIKE THE CASE GOES AWAY IF I REMAND IT. YOU ARE STILL
9 HERE. YOU ARE OVER THERE, BUT WE ARE ALL TOGETHER IN A
10 SPIRITUAL SENSE, MAYBE. BUT WHAT'S THE PROBLEM WITH THAT?

11 **MS. HORN:** THERE ARE A COUPLE PROBLEMS. ONE, RIGHT
12 NOW THE WAY THINGS STAND, THAT IS A BYETTA PROCEEDING. EVERY
13 TIME THERE IS A CONFERENCE, THEY TALK ABOUT THE BYETTA CLAIMS
14 AND HOW THEY ARE GOING TO STRUCTURE THEIR BYETTA TRIALS. IT
15 HAS NOT BEEN A MERCK PROCEEDING. THE MERCK PROCEEDING IS THIS
16 PROCEEDING. THAT IS THE FIRST THING.

17 AND THE SECOND THING IS THAT WHEN YOU HAVE MULTIPLE
18 COURTS OPERATING AT THE SAME TIME, YOU ARE GOING TO END UP WITH
19 CONFLICTS. IT'S GREAT THAT RIGHT NOW THERE IS COORDINATION
20 BUT, AGAIN, THERE IS NO GUARANTEE OF THAT. THERE IS ALWAYS THE
21 POSSIBILITY OF CONFLICT.

22 WE ALSO KNOW, FROM SOME OF THE ORDERS OR COMMENTS
23 MADE BY JUDGE HIGHBERGER, THAT DOWN THE LINE THERE MAY BE SOME
24 PROCEDURAL ISSUES FROM CALIFORNIA THAT REQUIRE THEM TO SPEED UP
25 GETTING TRIALS DONE, DEPENDING ON WHAT IS GOING ON IN THIS

1 COURT. AND THAT IS JUST ONE EXAMPLE OF THAT.

2 AND HERE WE HAVE A PROCEEDING THAT WAS CREATED
3 SPECIFICALLY FOR THESE CLAIMS. NOT FOR BYETTA CLAIMS, NOT FOR
4 PANCREATITIS CLAIMS, BUT FOR THESE CLAIMS. AND SO WE THINK
5 THEY SHOULD BE TRIED OR LITIGATED HERE.

6 **THE COURT:** OKAY. FAIR ENOUGH.

7 ANYTHING ELSE YOU WOULD LIKE TO ADD BEFORE I ASK YOUR
8 COLLEAGUES IF THEY WANT TO CHIP IN? NO.

9 EITHER OF YOU FOLKS WANT TO ADD, MS. TURNER OR MS.
10 PISTILLI?

11 **MS. PISTILLI:** NO, THANK YOU, YOUR HONOR.

12 **MS. TURNER:** NO, YOUR HONOR.

13 **THE COURT:** MR. SHKOLNIK, DID YOU WANT TO RESPOND?

14 **MR. SHKOLNIK:** JUST A QUICK RESPONSE, YOUR HONOR.
15 WITH RESPECT TO -- I WILL REFER TO THEM AS THE NAPOLI BERN
16 PLAINTIFFS INSTEAD OF KELLY OR WHICH COMPLAINT. COUNSEL IS
17 INCORRECT. IN EACH CAUSE OF ACTION IT SPECIFICALLY SAYS THAT
18 THE PLAINTIFF WAS EITHER MARKETING TO, PROMOTED, DISTRIBUTED TO
19 AND WAS THE RECEIVER OF THE DRUG. AND IT APPLIED TO ALL THE
20 DEFENDANTS.

21 SO THE FACT THAT MR. THOMPSON'S FIRM DECIDED TO BREAK
22 IT DOWN TO A SEPARATE PARAGRAPH AND NAME THE PERSON -- NAME THE
23 ENTITY VERSUS US DOING IT AS DEFENDANTS, I DON'T THINK THAT
24 REALLY MAKES MUCH DIFFERENCE.

25 AS TO THIS IDEA OF DISCOVERY IN THESE CASES, IT JUST

1 MAKES, FROM MY STANDPOINT, AND MAYBE I'M JUST BEING -- I DON'T
2 KNOW, MAYBE I'M LOOKING AT IT WRONG, BUT WE'RE DEALING WITH
3 SUBJECT MATTER JURISDICTION. THIS SHOULD BE SENT BACK TO THE
4 STATE COURT. IF THERE IS DISCOVERY, IT CAN BE DONE THROUGH
5 JUDGE HIGHBERGER'S DIRECTION VERY QUICKLY, IF THAT'S WHAT HE
6 WISHES; IF HE DOESN'T WISH IT, AND IF THOSE CASES HAVE TO BE
7 REMOVED INDIVIDUALLY, THE SPECIFIC ONES, THEN SO BE IT.

8 BUT TO COMPLICATE THIS MDL WITH THAT TYPE OF
9 CASE-SPECIFIC DISCOVERY, WHILE THE DEFENDANTS WERE THE ONES WHO
10 ASKED FOR THE COURT TO DO NO DISCOVERY ON ANY OF CASES EXCEPT
11 FOR GENERAL CAUSATION, SEEMS LIKE IT'S AN UNUSUAL PROCESS.

12 I THINK THE COURT SHOULD LOOK AT THE SUBJECT MATTER
13 JURISDICTION. LET JUDGE HIGHBERGER DEAL WITH WHATEVER
14 CASE-SPECIFIC DISCOVERY IS NECESSARY. AND IF AN INDIVIDUAL
15 PLAINTIFF IN THESE GROUPS SHOULD BE REMOVED AGAIN, AT THAT
16 POINT THEN IT'S DEALT WITH THAT WAY, INSTEAD OF MASSIVE
17 DISCOVERY. THANK YOU.

18 **THE COURT:** MR. THOMPSON, WOULD YOU LIKE TO ADD TO
19 THE MIX?

20 **MR. THOMPSON:** JUST ONE BRIEF THING, YOUR HONOR. A
21 MOMENT AGO SHE NOTED THAT HAVING THESE CASES GO BACK TO THE
22 CALIFORNIA STATE COURT WOULD CREATE -- A POSSIBILITY OF
23 CONFLICT WOULD BE CREATED BASED ON CASES BEING IN THAT
24 PROCEEDING.

25 AND THE ONE THING THAT I WOULD JUST LIKE TO REALLY

1 FOCUS THE COURT ON IS THE VERY FIRST MERCK CASE THAT WENT INTO
2 THE JCCP FOR PANCREATIC CANCER WAS MINE. THAT CASE ENDED UP IN
3 THE JCCP AS A RESULT OF COUNSEL FOR MERCK APPROACHING ME,
4 ASKING ME TO DISMISS MY CASES THAT WERE PENDING IN NEW JERSEY
5 STATE COURT SO THAT WE COULD COORDINATE HERE IN CALIFORNIA.

6 I AGREED TO DO THAT. BY STIPULATION THAT WAS DRAFTED
7 BY COUNSEL FOR MERCK, THAT ONE CASE THAT HAD A NEW JERSEY
8 PLAINTIFF WAS FILED INTO THE JCCP AT THE DIRECTION OF THE
9 DEFENDANTS.

10 SO TO THE EXTENT THERE IS ANY POSSIBILITY FOR THERE
11 TO BE SOME SORT OF CONFLICTED CREATED, IT'S ONE THAT WAS
12 INITIATED BY MERCK. AND SO WE HAVE CONTINUED NOW TO FILE CASES
13 THERE. BUT THE VERY FIRST ONE THERE WAS PUT THERE BY THEM, IN
14 EFFECT. AND I JUST WANTED TO BRING THAT TO THE COURT'S
15 ATTENTION. THANK YOU.

16 **THE COURT:** OKAY. WELL, THANK YOU ALL FOR THE
17 CLARIFICATION, THE COMMENTS AND HELPING GIVE ME EVERYTHING I
18 FEEL I NEED TO NOW REFLECT AND RULE.

19 SO I WILL TAKE THE MATTER UNDER SUBMISSION AND RULE
20 IN WRITING AS SOON AS PRACTICABLE. AND SO THANK YOU FOR ALL OF
21 THAT.

22 AND I WANTED TO TAKE THE OPPORTUNITY, SINCE WE HAVE
23 BOTH SIDES, RELATIVELY SPEAKING, HERE, TO FLAG AN ISSUE FOR THE
24 STATUS CONFERENCE NEXT WEEK, RELATED TO THE DERIVATIVE
25 PLAINTIFF ISSUE.

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1 **MR. THOMPSON:** YES, YOUR HONOR.

2 **MR. SHKOLNIK:** YES, YOUR HONOR.

3 **THE COURT:** I THINK, MR. SHKOLNIK OR MR. THOMPSON,
4 YOU ARE PROBABLY INVOLVED IN THAT DISCUSSION ALREADY.

5 **MR. THOMPSON:** YES, YOUR HONOR.

6 **THE COURT:** AND I DON'T KNOW IF THESE DEFENSE COUNSEL
7 ARE OR NOT. AND I AM GOING TO GIVE YOU THIS. YOU CAN CARRY IT
8 BACK TO YOUR RESPECTIVE CAMPS.

9 BUT I THOUGHT WE NEEDED ANOTHER PARAGRAPH AT THE END,
10 AND I WILL GIVE YOU THIS. I WILL READ IT INTO THE RECORD AND
11 YOU CAN TAKE MY DRAFT. YOU DON'T HAVE TO WRITE NOTES.

12 BUT MY CONCERN IS, FIRST, I'M ONBOARD WITH THIS
13 CONCEPT, BUT I DON'T WANT ANYONE OUT THERE -- PARTICULARLY THE
14 INDIVIDUAL STATE REPRESENTATIVES -- TO THINK THAT THEIR
15 APPOINTMENT HERE GIVES THEM SOME RIGHTS, OR AUTHORITY,
16 ENTITLEMENT IN SOME OTHER PROCEEDING OR IN SOME OTHER FORUM. I
17 AM PROTECTIVE OF OTHERS' JURISDICTION AND RECOGNIZING I HAVE TO
18 OPERATE WITHIN MY ON SPIRIT.

19 SO I HAVE A PROPOSED PARAGRAPH YOU CAN ALL LOOK AT OR
20 YOUR RESPECTIVE COMMITTEES CAN LOOK AT AND SEE IF THIS OR
21 SOMETHING LIKE IT WOULD SUIT. BUT IT BASICALLY WOULD BE ITEM
22 FOUR, AT PAGE SIX, AT LINE 11, AND READ: NO OTHER RIGHTS,
23 AUTHORITY OR ENTITLEMENTS ARE GRANTED TO THE INTERIM ESTATE
24 REPRESENTATIVES IN ANY OTHER STATE OR FEDERAL COURT OR IN ANY
25 PROCEEDING OR REGARDING ANY MATTERS OR TRANSACTIONS THAT ARE

1 NOT EXPRESSLY STATED IN THIS ORDER.

2 YOU DON'T HAVE TO COMMENT ABOUT IT NOW. I WILL GIVE
3 YOU FIVE COPIES FOR THE FIVE FOLKS HERE. TAKE IT BACK AND
4 MAYBE WE CAN TALK ABOUT IT NEXT WEEK. BECAUSE, OTHERWISE, I
5 HAVE A COUPLE QUESTIONS WE CAN ADDRESS NEXT WEEK AND WE CAN
6 FINALIZE THE ORDER.

7 THE OTHER ONES ARE MUCH MORE NARROW, AND I WILL WAIT
8 FOR THE FULL GROUP. THANKS FOR YOUR INDULGENCE ON THAT. THE
9 FOLKS ON THE PHONE WILL JUST HAVE TO WAIT AND SEE THE HARD
10 COPY. BUT NO RUSH; WE HAVE UNTIL NEXT WEEK.

11 I THOUGHT IT WOULD MAKE ME MORE COMFORTABLE IN
12 SELF-LIMITING TO SPECIFIC PURPOSES THAT YOU HAVE ENUMERATED,
13 WITHOUT PREJUDICE TO YOUR MODIFYING THAT LATER ON IF SOMETHING
14 ELSE COMES UP. I'M NOT ADVERSE TO THAT. I JUST THINK WE NEED
15 TO BE SPECIFIC.

16 SO THANKS FOR YOUR HELP ON THAT AND FOR YOUR OTHER
17 COMMENTS. IF THERE IS NOTHING ELSE, WE'LL BE IN RECESS, THEN.

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1 **MR. SHKOLNIK:** THANK YOU, YOUR HONOR.

2 **THE COURT:** THANKS TO YOU ON THE PHONE, AND THANKS TO
3 ALL YOU FOLKS HERE. HAVE A GOOD DAY AND WE'LL TALK TO YOU
4 SOON.

5 (PROCEEDINGS CONCLUDED AT 2:39 P.M.)

6 CERTIFICATION

7 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
8 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
9 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT
10 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE
11 ON AUGUST 7, 2014; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT
TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT
USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE
UNITED STATES JUDICIAL CONFERENCE.

12 DATED: 8/20/14, AT SAN DIEGO, CALIFORNIA.

13 S/N
14 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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